IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5189/2004
(Jaidev Singh Vs. Labour Court, Jodhpur & Anr.)

Date of Order : 15/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Vijay Mehta for the petitioner.
Mr. Rameshwar Dave, Deputy Government Advocate.

BY THE COURT:-

By the instant writ petition under Article 226 & 227 of the Constitution of India, the petitioner workman has challenged the award Annex.3 dated 19.11.2001 passed by respondent No.1, Labour Court, Jodhpur (for short 'the Labour Court' hereinafter).

The facts and circumstances giving rise to the instant writ petition are that the petitioner workman raised an industrial dispute. Conciliation proceedings were held and on failure of the conciliation proceedings, the Government of Rajasthan made a reference to the Labour Court vide Notification dated 01.5.1997 as to whether the termination/ retrenchment of the petitioner workman w.e.f. 31.3.1990 was valid and legal. After receipt of

the reference from the Appropriate Government, the Labour Court registered the claim, issued notices to the parties and on receipt of the notice, the petitioner workman filed his claim before the Labour Court. A written statement was also filed by the respondent No.2 employer. The petitioner came with a case that he was initially engaged on 10.1.1985 as daily rated worker and thereafter with certain breaks he continued to work as daily rated worker up to 31.3.1990. The petitioner alleged that by an oral order, his services have been terminated and he was retrenched without following the procedure prescribed under Section 25-F of the Industrial Disputes Act, 1947 (for short 'the I.D. Act' hereinafter)

The respondent employer filed a reply and denied the claim. It has been stated by the respondent employer that the petitioner workman worked for 169 days in the year 1986, 29 days in the year 1988 and 96 days in the year 1989 and as such he had not completed 240 days in any one calender year and therefore, there was no requirement for complying with the provisions of Section 25-F of the I.D. Act. The respondent employer came with a case that it was the petitioner workman who at his own left the work and discontinued attending the work as daily rated worker.

Before the Labour Court, the petitioner workman filed his affidavit Annex.1 and respondent No.2 employer filed

an affidavit of Pratap Singh Chawda, Assistant Engineer, Annex.2. From the affidavit filed by the petitioner workman it nowhere appears that he had worked for 240 days in any one calender year. He only came with a case that he was engaged by the respondent employer on 10.1.1985 as daily rated worker and continued up to 31.3.1990 with certain artificial breaks. He has not given any details so as to show that he had worked for 240 days in any one calender year preceding his retrenchment. On behalf of the respondent employer, Pratap Singh Chawda, Assistant Engineer filed an affidavit and stated that from January 1986 to December, 1989, the petitioner had not worked for 240 days in any one calender year. On the contrary, he was engaged as daily rated worker on urgent need and he worked for few months in piecemeal, and he at his own left the work. On the basis of the record available with the employer, he stated that the petitioner used to be engaged whenever the work arose in piecemeal and as such he had not remained continuously in service for 240 days in any one calender year.

Learned Deputy Government Advocate appearing for the respondent employer relied on decisions of Hon'ble Supreme Court in Range Forest Officer Vs. S.T.Hadimani (2002) 3 SCC 25, in Municipal Corporation, Faridabad Vs. Siri Niwas (2004) 8 SCC 195 and in R.M.Yellatti Vs. Asstt. Executive Engineer (2006) 1 SCC 106 and submits that on similar facts, the Hon'ble Apex

Court held that the burden of proof is on the workman to prove that he had worked for 240 days in any one calender year preceding his retrenchment.

Learned counsel appearing for the petitioner workman submit that it was for the employer to produce the Muster rolls for the period in which the petitioner workman worked with them and since the respondent employer failed to produce the muster-roll, therefore, an adverse inference be drawn against the employer.

In Range Forest Officer Vs. S.T.Hadimani (supra), Hon'ble Supreme Court held that it was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.

In Municipal Corporation, Faridabad Vs. Siri Niwas (supra) Hon'ble Supreme Court held that the burden of proof was on the respondent workman therein to show that he had

worked for 240 days in the preceding twelve months prior to his alleged retrenchment. From the award, it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention, he did not produce or call for any document from the office of the appellant therein including the muster rolls. It is improbable that a person working in a local authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He did not even examine any other witness in support of his case. Hon'ble Supreme Court further held that presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of the facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its

jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent. The Hon'ble Supreme Court opined that the High Court committed a manifest error in setting aside the award of the Tribunal only on the basis of adverse inference drawn against the appellant for not producing the muster rolls.

in R.M.Yellatti Vs. Asstt. Executive Engineer (supra) Hon'ble Supreme Court held that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. In that case, the workman had called upon the Management to produce the nominal muster rolls.

In the instant case, admittedly, the petitioner workman at no point of time called upon the respondent employer to produce the muster rolls. On the contrary, from the evidence produced by the employer it has been established that

the petitioner was engaged as daily rated worker and he had worked for 169 days in the year 1986, 29 days in the year 1988 and 96 days in the year 1989. The Labour Court found that even if the version of the petitioner is taken to be correct that he worked for six to seven months in the year 1990 then also, the working period works out to 210 days inclusive of the holidays and sundays. Accordingly, the learned Labour Court held that the petitioner workman had not completed 240 days in any one calender year preceding his retrenchment.

In my view, the finding of fact arrived at by the Labour Court cannot be said to be erroneous. The contention raised by the learned counsel for the petitioner for drawing adverse inference against the respondent employer for not producing the muster rolls cannot be accepted in view of the decisions of Hon'ble Supreme Court referred herein above.

In this view of the matter, I do not find any merit in the writ petition. The writ petition is, therefore, dismissed. No order as to costs.

(H.R.PANWAR),J.

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